

Regular Session, 2009

SENATE BILL NO. 205

BY SENATOR ADLEY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC RECORDS. Provides relative to the application of the laws relative to public records of the office of the governor.

AN ACT

To amend and reenact R.S. 29:725.2(B), R.S. 30:10.1(B)(3), R.S. 33:9614(C), and R.S. 44:5 and to repeal R.S. 44:5(B), relative to records of the office of the governor and of certain agencies in the office of the governor; to apply the laws relative to public records to the office of the governor and agencies and officials within the office of the governor; to provide for definitions; to provide for effectiveness; to remove or change certain references to the exemption; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 44:5 is hereby amended and reenacted to read as follows:

§5. Records ~~in custody of~~ **the office of the** governor

A. ~~This Chapter shall not apply to any of the books, records, writings, accounts, letters, letter books, photographs, or copies thereof ordinarily kept in the custody or control of the governor in the usual course of the duties and business of his office, or to those having been used, being in use, or prepared, possessed, or retained for use by or on behalf of the governor in the usual course of the duties and business of his office.~~

B. ~~The provisions of this Section shall not apply to any agency transferred~~

1       ~~or placed within the office of the governor.~~

2               ~~C.~~ **Records of the office of the governor shall be public records and shall**  
3 **be subject to the provisions of this Chapter.**

4               **B.(1)(a) Notwithstanding the provisions of Subsection A of this Section,**  
5 **any record of the executive office of the governor related to any economic**  
6 **development negotiation for which the records have been made confidential**  
7 **pursuant to R.S. 44:22 shall remain confidential for the same period of time that**  
8 **records of the Department of Economic Development pertaining to the**  
9 **negotiation are confidential pursuant to R.S. 44:22.**

10              **(b) If the office of the governor receives a request to inspect, examine,**  
11 **copy, or obtain a reproduction of records made confidential pursuant to**  
12 **Subparagraph (a) of this Paragraph and the request is denied, any such denial**  
13 **shall contain a reference to the notice published in accordance with R.S. 44:22**  
14 **regarding the specific economic development negotiation to which the records**  
15 **are related.**

16              **(2)** The provisions of this ~~Section~~ **Subsection** shall not prevent any person  
17 ~~otherwise herein authorized so to do from~~ **inspecting,** examining, and copying, ~~or~~  
18 **obtaining a reproduction of** any books, records, papers, accounts or other  
19 ~~documents~~ **record** pertaining to any money or monies or any financial transactions  
20 in the control of or handled by or through the governor **or the office of the**  
21 **governor.**

22              **(3) For purposes of this Subsection, "executive office of the governor"**  
23 **shall mean the governor, his chief of staff, and his executive counsel.**

24       Section 2. R.S. 29:725.2(B) is hereby amended and reenacted to read as follows:

25       §725.2. Confidentiality of certain records

26                               \*       \*       \*

27              B. The provisions of this Section shall not prevent any person from  
28 examining and copying any books, records, papers, accounts, or other documents of  
29 the Governor's Office of Homeland Security and Emergency Preparedness, except

as provided in Subsection A of this Section. ~~Such records shall not be subject to the provisions of R.S. 44:5.~~

\* \* \*

Section 3. R.S. 30:10.1(B)(3) is hereby amended and reenacted to read as follows:

§10.1. Authority of governor with advice of the commissioner of conservation to enter unitization agreements affecting the production from state and federal water bottoms

\* \* \*

B. Unit Agreement.

\* \* \*

(3) Upon a determination by the governor that a common potentially hydrocarbon bearing area may underlie the federal and state boundary offshore, all or any portion or portions of which the governor has reason to believe may be appropriate for unit operations, the governor shall direct the commissioner of conservation to call a hearing for the purpose of receiving evidence from affected state or federal lessees or from any other interested persons. The commissioner shall, after a review of all testimony and evidence, transmit to the governor an advisory opinion containing such information and recommendations as may be requested by the governor. The advisory opinion shall be deemed confidential and shall be exempt from the provisions of R.S. 44:1 et seq., in accordance with the provisions of R.S. 44:4(8) and R.S. ~~44:5~~ **44:4.1(B)**.

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Section 4. R.S. 33:9614(C) is hereby amended and reenacted to read as follows:

§9614. Confidentiality of preliminary investigations

\* \* \*

C. Except for the completed reports, findings, advisories, letters, and recommendations of investigations, audits, inspections, performance reviews, qualitative assurance reviews, peer reviews, annual operating budgets, and annual office reports, the records prepared or obtained by the ethics entity, ethics review

1 board, or office of inspector general shall be deemed confidential and protected from  
2 disclosure pursuant to R.S. 44:3 and ~~44:5~~. In order to maintain the confidentiality  
3 of such materials, the ethics entity, ethics review board, or office of inspector general  
4 may meet and make decisions in executive session. No privilege established by law  
5 shall be deemed waived on any record obtained by the ethics entity, ethics review  
6 board, or office of inspector general in connection with the performance of duties  
7 established by this Chapter. Any record or information obtained by the ethics entity,  
8 ethics review board, or office of inspector general which is confidential pursuant to  
9 any other provision of law shall remain confidential, and it shall be a misdemeanor  
10 punishable by a fine of not more than two thousand dollars or imprisonment for not  
11 more than one year, or both, for the ethics entity, ethics review board, or office of  
12 inspector general or any designated staff member or any other public official,  
13 corporation, or individual to make public any such information or record.

14 Section 5. R.S. 44:5(B) as amended and reenacted by this Act is hereby repealed in  
15 its entirety.

16 Section 6.(A) This Section and Sections 1, 2, 3, and 4 of this Act shall become  
17 effective upon signature of this Act by the governor or, if not signed by the governor, upon  
18 expiration of the time for bills to become law without signature by the governor, as provided  
19 by Article III, Section 18 of the Constitution of Louisiana. If this Act is vetoed by the  
20 governor and subsequently approved by the legislature, this Section and Sections 1, 2, 3, and  
21 4 of this Act shall become effective on the day following such approval.

22 (B) Section 5 of this Act shall become effective at noon on January 9, 2012.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Clifton W. Gillespie.

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#### DIGEST

Present law provides a general exemption from the public records laws for records ordinarily kept in the custody or control of the governor in the usual course of the duties and business of his office, or to those having been used, being in use, or prepared, possessed, or retained for use by or on behalf of the governor in the usual course of the duties and business of his office. Specifies that the exemption does not apply to agencies transferred or placed within the office of the governor and provides that the exemption shall not prevent any person otherwise authorized from examining and copying any books, records, papers, accounts, or other documents pertaining to any money or monies or any financial transactions in the

control of or handled by or through the governor.

Proposed law provides instead that the records of the office of the governor are public records and subject to the laws relative to public records.

Proposed law provides that until noon on Jan. 9, 2012, certain records of the executive office of the governor, relative to economic development negotiations, the records of which have been made confidential by the Dept. of Economic Development pursuant to present law shall be confidential. Defines "executive office of the governor" as the governor, his chief of staff, and his executive counsel. Specifies that the exemption shall not prevent any person from inspecting, examining, or obtaining a reproduction of any record pertaining to any money or monies or any financial transactions in the control of or handled by or through the governor or the office of the governor in accordance with public records laws.

Proposed law removes certain unnecessary references to the present law gubernatorial public records exemption relative to the Governor's Office of Homeland Security and Emergency Preparedness and certain local ethics entities and inspector general offices but maintains present law confidentiality of certain advisory opinions by the commissioner of conservation to the governor regarding potential hydrocarbon bearing areas under the federal and state boundary offshore which the governor has reason to believe may be appropriate for unit operations and changes the reference to the public records law exemption.

Present law provides penalties for violations of the public records laws and provides that a person who has custody or control of a public record who violates the laws relative to public records, or a person not having such custody or control who by any conspiracy, understanding, or cooperation with any other person hinders or attempts to hinder the inspection of any public record subject to inspection, shall upon first conviction be fined not less than \$100 and not more than \$1,000, or shall be imprisoned for not less than one month nor more than six months. Provides that upon a subsequent conviction, he shall be fined not less than \$250 and not more than \$2,000, or imprisoned for not less than two months nor more than six months, or both.

Effective upon signature of governor or lapse of time for gubernatorial action, except the repeal of the exemption is effective at noon on January 9, 2012.

(Amends R.S. 29:725.2(B), R.S. 30:10.1(B)(3), R.S. 33:9614(C), and R.S. 44:5; Repeals R.S. 44:5(B))